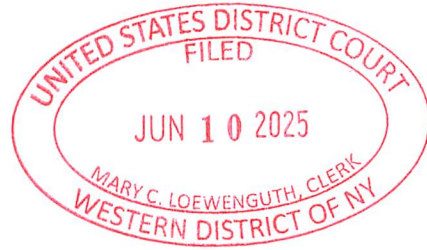


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



JAMES PANELLA,

Plaintiff,

v.

18-CV-1220 (JLS) (LGF)

UNITED STATES OF AMERICA,

Defendant.

DECISION AND ORDER

James Panella commenced this action against Defendant United States of America and others on August 28, 2017 in the United States District Court for the District of New Jersey. *See* Dkt. 1. Panella alleges claims pursuant to the Federal Tort Claims Act (“FCTA”), 28 U.S.C. §§ 2671-2680, related to injuries he allegedly sustained during a customs inspection on August 30, 2025 at the Lewiston-Queenston Bridge. *Id.* Panella filed an amended complaint (Dkt. 12) that left only the United States as Defendant, who thereafter successfully sought a transfer of venue to this Court. Dkt. 22.

On March 27, 2024, Defendant filed a motion for partial summary judgment, seeking summary judgment on all claims except Panella’s assault and battery claims. Dkt. 98. Panella opposed the motion, Dkt. 106, and also filed a cross-motion for judicial estoppel, Dkt. 107. Defendant replied. Dkt. 113.

On May 13, 2025, Judge Foschio¹ issued a Report and Recommendation (“R&R”) (Dkt. 114) that recommended granting Defendant’s motion for partial summary judgment and denying Panella’s cross-motion. No party filed objections, and the time to do so has passed.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

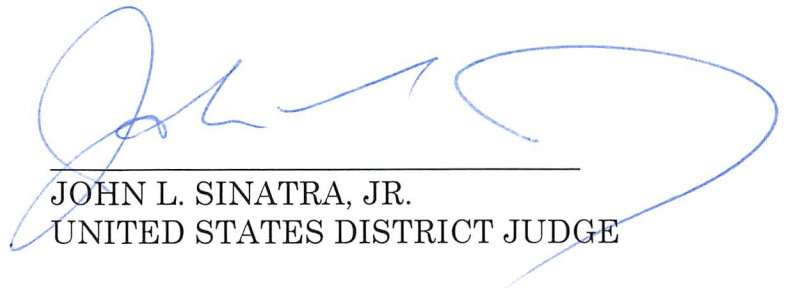
This Court carefully reviewed the R&R and the relevant record. Based on that review, the Court accepts Judge Foschio’s recommendation.

¹ This Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 26.

For the reasons stated above, and in the R&R, this Court GRANTS Defendant's motion for partial summary judgment (Dkt. 98), and DENIES Panella's cross-motion for judicial estoppel (Dkt. 107). Thus, the Complaint should be dismissed as to all claims except Panella's assault and battery claims.

SO ORDERED.

Dated: June 10, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE